



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0133]

Commercial Driver's License (CDL): Application for Exemption Renewal; U.S. Custom Harvesters, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew a U.S. Custom Harvesters, Inc. (USCHI) exemption from the “K” intrastate restriction on commercial driver’s licenses (CDLs) for custom harvester drivers operating in interstate commerce for a two-year period, with additional terms and conditions. FMCSA’s regulations currently provide an exception to the minimum age requirements for drivers of commercial motor vehicles (CMVs) controlled and operated by a person engaged in interstate custom harvesting. However, under the Agency’s CDL regulations, States may include an intrastate-only (or “K”) restriction for these drivers. This provisional renewal of the exemption continues relief from the CDL provision for two years.

DATES: This renewed exemption is effective October 3, 2023, through October 3, 2025. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0133 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2017-0133) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the **Privacy Act** heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 – FDMS, which can be reviewed at <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, Chief, Driver and Carrier Operations Division, Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366-9220 or latonya.mimms@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0133), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, put the docket number "FMCSA-2017-0133" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the FMCSRs. FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety

analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the Federal Register (49 CFR 381.315(b)). If granted, the notice will identify the name of the person or class of persons receiving the exemption and the regulatory provision from which that party is exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

USCHI describes the operations of its member companies as supplying equipment and labor to assist farmers with harvesting during their busiest seasons and provides the following summary of the nature of these operations:

Typically, there are two different classes of operations, grain harvesting and forage harvesting. A grain harvester uses combines to harvest wheat, corn, barley, canola, sunflowers, soybeans, and grain sorghum, among others. These crop products are transported to an elevator or on-farm storage, where the crop is stored and later transported elsewhere to be processed into products for public use. A forage harvester uses a chopper to harvest whole-plant crops such as corn, sorghum, milo, triticale, and alfalfa. These crops are used for silage to feed livestock in dairies and feedlots. Some operators harvest crops such as cotton that require other specialized equipment. Custom harvesters travel from State to State and can spend from a few days to several months cutting crops for one farmer.

Customer harvesters frequently employ drivers younger than 21 years of age, who are issued CDLs with a “K” restriction that makes the license valid only for operations within the issuing state (49 CFR 383.23(a)(2) and 49 CFR 383.153(a)(10)(vii)). Under an exception in place since 1971, the 21-year-old age requirement, however, does not apply to a CMV driver who drives a CMV controlled and operated by a person engaged in custom-harvesting operations, provided that certain conditions are met. (49 CFR 391.2).

Those drivers are therefore allowed to drive in interstate custom harvesting operations notwithstanding the “K” restriction on their licenses.

USCHI states that even though CMV drivers engaged in custom harvesting are excepted from the 21-year-old requirement, they are frequently cited during roadside inspections because of the presence of the “K” restriction on their license. USCHI states that this issue impacts the safety records of drivers and employers.

On October 3, 2018, FMCSA granted USCHI’s original exemption request, providing relief from the requirements of 49 CFR 383.23(a)(2) and 49 CFR 383.153(a)(10)(vii) for a period of five years (expiring October 3, 2023). FMCSA noted that although it was granting the exemption, the exemption did not require any special action or processing by the state driver licensing agencies, who will continue to place the “K” restriction when called for, but enforcement officers will disregard it in situations involving drivers who can demonstrate eligibility for the custom harvester exemption. (83 FR 49977, 49978).

USCHI asks the Agency to renew its exemption for another five-year period, subject to terms and conditions, to allow law enforcement officers to determine that the driver is operating in custom harvester operations. For example, USCHI proposes that the driver be required to provide at least three methods of verification while *en route*. A copy of USCHI’s request for an exemption renewal is available for review in the docket for this notice.

IV. Equivalent Level of Safety

FMCSA is not aware of any evidence showing that allowing the exemption concerning the intrastate-only “K” restriction, has resulted in any degradation in safety. Interstate operations for non-CDL custom harvester drivers younger than 21 are allowed pursuant to 49 CFR 391.2(a), and intrastate operations for CDL custom harvester drivers under the age of 21 can be accomplished under 49 CFR 383.23(a)(2) and

383.153(a)(10)(vii). The requested exemption allows interstate CDL custom harvester drivers under the age of 21, which mirror what these drivers are allowed to do in intrastate custom harvester operations.

The Agency notes that, likely through miscommunications and misunderstandings between the Agency, USCHI and its membership, certain crashes involving the drivers operating under the exemption were not reported to the Agency during the first 5-year exemption. FMCSA's review of USCHI members' data indicates there have been crashes which could be considered preventable. The Agency obtained 14 police crash reports involving custom harvester operators under the age of 21. However, given the 5-year period of the exemption, and a lack of information on the age peer group within the agricultural driver population, there is insufficient information to conclude that the exemption has resulted in a degradation of safety.

FMCSA therefore concludes that provisionally extending the exemption for two years and enhancing the terms and conditions to assist the Agency's oversight of the exemption will likely maintain a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption. During the two-year period of the provisionally extended exemption, in addition to enhancing the terms and conditions of the exemption, FMCSA will initiate a data analysis project to examine the safety performance of custom harvester drivers under the age of 21, in comparison to other drivers in the agriculture sector of the motor carrier industry. The data collection period will occur during the fall of 2023, after which FMCSA will begin analyzing the data. The Agency currently has violation data on motor carriers that utilize the transportation of agricultural commodities exception to the hours-of-service rules, and the new study will assist the Agency in conducting a more in-depth analysis of their safety performance as a group and the safety performance of the subset of custom harvester

drivers under the age of 21. This information will aid in assessing the safety impacts of the USCHI exemption prior to the expiration of the two-year provisional renewal.

V. Exemption Decision

A. Grant of Two-Year Exemption

FMCSA provisionally renews the exemption for a period of two years, subject to the new terms and conditions of this decision and the absence of public comments and data that would cause the Agency to terminate the exemption under Sec. V.E. below. The exemption from the “K” intrastate restriction on CDLs held by custom harvester drivers operating in interstate commerce is otherwise effective October 3, 2023, through October 3, 2025, at 11:59 p.m. local time, unless renewed or rescinded.

B. Applicability of Exemption

Custom Harvester Drivers

Custom harvester drivers will be able to display this exemption notice to help explain that when operating in that capacity, they are permitted to operate outside the state issuing their CDL even though the license has a “K” (intrastate only) restriction.

Enforcement Officers

This exemption notice will explain to law enforcement officers that 49 CFR 391.2(a) authorizes custom harvester drivers to operate in interstate commerce even though they are under 21 years of age. The notice will explain that a “K” restriction on these drivers’ CDLs does not limit them from driving outside the license-issuing state when they are operating as custom harvesters in accordance with 49 CFR 391.2(a).

State Driver Licensing Agencies

This exemption requires no action or inaction on the part of the state driver licensing agencies. They will continue to issue CDLs with a “K” restriction to drivers under the age of 21.

C. Terms and Conditions

Requirements for the First 90 Days of Provisional Two-Year Renewal

For the first 90 days of this provisional two-year renewal of the exemption, motor carriers and drivers are subject to the following terms and conditions:

(1) Drivers for custom harvesters operating in interstate commerce shall be exempt from any intrastate-only “K” restriction on their CDLs when operating under the provisions of this exemption.

(2) Drivers must have a copy of this notice in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

(3) Drivers to be included in this exemption are identified in 49 CFR 391.2 as those operating a CMV to transport farm machinery, supplies, or both, to or from a farm for custom harvesting operations on a farm; or transport custom-harvested crops to storage or market.

(4) To ensure that the driver is authentically operating as a custom harvester, he or she should be able to provide at least three of the following methods of verification:

(a) The driver may have on hand a valid custom harvesting document such as a current-date agricultural commodity scale sheet, a current-date custom harvesting load sheet, an official company document stating the company's purpose, etc.;

(b) The CMV may have license plates specific to custom harvesting, or the verbiage “Harvesting” may be part of the business signage on the vehicle;

(c) The CMV may be designed to haul a harvested agricultural commodity or equipment for harvesting or be a support vehicle for custom-harvesting operations, such as a service truck;

(d) The CMV may be hauling a harvested agricultural commodity or equipment for the purpose of custom harvesting;

(e) The CMV may have a newly harvested commodity or remnants on board;

(f) The driver will be able to provide a verifiable location of the current harvesting operation or delivery location for a harvested commodity.

Requirements After the First 90 Days of the Provisional Renewal

After the first 90 days of this exemption notice, motor carriers and drivers are subject to the following terms and conditions:

(1) Drivers for custom harvesters operating in interstate commerce shall be exempt from any intrastate-only “K” restriction on their CDLs when operating under the provisions of this exemption.

(2) Drivers must have a copy of this notice in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

(3) Drivers to be included in this exemption are identified in 49 CFR 391.2 as those operating a CMV to transport farm machinery, supplies, or both, to or from a farm for custom harvesting operations on a farm; or transport custom-harvested crops to storage or market.

(4) The USCHI must provide FMCSA with a list of motor carrier USDOT numbers that are engaged in custom farm operations. The driver must be working for a motor carrier with a USDOT number identified in the most current list provided to FMCSA by USCHI.

Requirements for Notification to FMCSA

Within 30 days of this notice, the USCHI must provide FMCSA with the USDOT numbers of the motor carriers that will be operating under this exemption. The USCHI must notify FMCSA within five business days of any crash (as defined in 49 CFR 390.5),

involving any of the drivers operating under the terms of the exemption. The notification must include the following information:

- (a) Identity of Exemption: “USCHI Renewal,”
- (b) Name of the custom harvester employer and USDOT number,
- (c) Date of the crash,
- (d) Origin and intended destination of the USCHI driver’s trip and the distance (in miles) of the crash from the driver’s home terminal,
- (e) Driver’s name, license number, and age,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury (including fatalities),
- (h) Number of fatalities,
- (i) The police-reported circumstances of the crash,
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations,
- (k) The driver’s total driving time and total on-duty time period prior to the accident,
- (l) Information about what safety training, if any, was provided to the under-21 years of age farm custom operator driver after the driver obtained a CDL, and
- (m) A scanned copy of the police accident report.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no state shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may,

but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

The exemption will be rescinded if: (1) the USCHI, motor carriers, and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

Should FMCSA receive notice of any potential adverse safety impacts, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption if necessary. FMCSA may immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

VI. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested parties on USCHI's application for exemption renewal. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,
Administrator.